

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6041 of 1986

Date of decision: 10-3-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LATHIDAD KHETI VISHAYAK VIVIDHKARYAKARI SAHKARI SOCIETY LTD.

Versus

MULJIBHAI MAGANBHAI PATEL

Appearance:

MR PV HATHI for Petitioner

MR PRAFUL J BHATT for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10-3-98

CAV JUDGEMENT

The petitioner - cooperative Society - has filed this special civil application and challenge has been made to the award of the Labour Court, Rajkot, in Reference (LGR) No.585/80 dated 14th August, 1986, under which the petitioner was ordered to reinstate the respondent workman on his original post with continuity of service and 50% back wages over and above interest which the workman has received in pursuance of the order of this High Court.

2. The facts of the case in brief are that respondent workman was appointed as Secretary of the petitioner Society in the year 1966 and under resolution of the Society dated 29th March, 1980 he was discharged from service. The respondent workman was suspended under resolution dated 21st December, 1979 prior to his discharge and he was called upon to hand over the charge. He filed civil suit No.119/97 in the court of Civil Judge (J.D.), Botad. However, the learned Civil Judge by his order dated 4th January, 1980 upheld the action of the society. The respondent workman, after his discharge from service, raised industrial dispute which has been referred to the Labour Court, and has been ultimately decided in his favour under the impugned award. As there were serious charges against respondent workman of misappropriation of the Society's funds, criminal case was also lodged against him, but it is not in dispute between the parties that he has been acquitted in the said case. Before the Labour Court the petitioner came up with the case that there were as many as eight serious charges against the respondent workman, but the Labour Court, taking into consideration those charges to be only carelessness on the part of respondent workman ordered for his reinstatement, and back wages were also ordered to be paid. Hence this special civil application before this court.

3. Learned counsel for the petitioner contended that the award of the Labour Court, on the face of it, is perverse. The Labour Court has not discussed the evidence of the parties and on conjectures and surmises, proceeded with the matter and all the charges which were there against the respondent workman have not been accepted. It has next been contended that the Labour Court has unnecessarily been influenced by the fact that in the criminal case the respondent workman has been discharged, but that discharge of the respondent workman in the criminal case is hardly of any substance. The judgment as well as the evidence recorded in criminal

case could not have been the evidence in the reference under the Industrial Disputes Act, 1947 in respect of the charge framed against the respondent workman for misappropriation of the Society's money. Carrying this contention further, learned counsel for the petitioner contended that there are serious charges against respondent workman and it could not have been taken to be a case of carelessness on his part. The respondent workman was holding the post of Secretary which was a post of confidence and as such from the charges which have been framed against him it is clearly a case of loss of confidence and in the facts and circumstances of the case the award of reinstatement of the respondent workman is wholly arbitrary and unjust.

4. Lastly the learned counsel for the petitioner contended that the approach of the Labour Court in this case is only to see that because the workman has approached it he should be granted the relief. Earlier the petitioner was compelled to approach this Court as the respondent workman was not entitled to any relief, but still pending reference the Labour Court has given direction for payment of salary to the respondent workman. That special civil application has been disposed of by this court on 8-7-1983 and the amount of Rs. 11,027/- deposited by the petitioner was ordered to be continued to remain in deposit and interest accruing thereon was ordered to be paid to respondent workman. On the other hand the respondent workman has supported the award passed by the Labour Court.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. I find sufficient merit in the contention raised by the learned counsel for the petitioner that the Labour Court has not discussed the evidence of the parties in detail and only on surmises and conjectures it has passed the award. There are very serious charges against respondent No.3 and the Labour Court has taken the matter very lightly. The question of temporary misappropriation of money of the Society is there and the respondent workman has come up with the case that under the instructions he had brought this fact to the notice of the President of the Society and he had returned this money to the Society's account. But the Tribunal has not considered in correct perspective the aspect that such a plea could have been taken by the respondent workman as the then President has expired. Moreover, such plea has been taken by the respondent workman in his own favour and as such in absence of any other supporting evidence

the same could not have been relied upon. The then President could have not been available as witness to either of the parties.

7. It is an admitted fact that respondent workman has recovered Rs.4,980/- due to the Society, but he deposited only Rs.3980/- in the Society's account. Rs.1000/- was kept by him. When respondent has received Rs.4,980/- that amount should have been deposited in the Society's account, and the very fact that he has only deposited Rs.3,980/- it goes to show that his intention was not bona fide and he clearly made attempt to misappropriate the Society's funds. When that has been detected, he has come out with manufactured defence, and such defence can be manufactured at any time. Merely because respondent workman is acquitted in the criminal case, the charge of temporary misappropriation of the Society's funds is not wiped off in the departmental inquiry. This charge is very serious, on which dismissal of respondent workman from the Society's service could have been maintained. But the Labour Court has taken it to be only a case of carelessness on the part of the respondent workman. The fact that the matter pertains to the year 1980 and further that respondent workman by now would have attained the age of superannuation, in the facts and circumstances of the case, I do not consider it to be a fit case to remand this matter to the Labour Court. Interest of justice will be met in case the award of the Labour Court is modified in terms that in view of the reinstatement of the workman with back wages as ordered by the Labour Court, the respondent workman shall be entitled to the sum of Rs.11,027/together with interest accrued thereon.

8. In the result the special civil application and rule stand disposed of accordingly. No order as to costs.

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